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09/944,994	08/30/2001	Laurie J. Brown	BrownLaurie-010614	2433

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EXAMINER

LEE, DIANE I

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/944,994	<b>Applicant(s)</b> BROWN, LAURIE J.	
	<b>Examiner</b> D. I. Lee	<b>Art Unit</b> 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-14 and 16-20 is/are rejected.

7) ☒ Claim(s) 15 is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All   b) ☐ Some \*   c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u>	6) <input type="checkbox"/> Other:

### DETAILED ACTION

1. Claims 1-20 are presented for examination.

#### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following items must be shown or the feature(s) canceled from the claim(s).

(a) product label with the unique machine-readable code No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury et al. [US 4,929,818-referred as Bradbury, cited by the applicant] in view of Cahill [US 4,285,426]

Re claims 1 and 11: Bradbury discloses an apparatus and a method for vending a containerized liquid product to a vendee utilizing an original container 10 for the liquid product, wherein the original containers have been packaged with the original fluid product therein (see the abstract; col. 4, lines 51+). After the original container has been emptied of the liquid product, then vending multiple refilling of the

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liquid product in the original container from a single dispensing station (i.e., dispensing the fluid product into the original container and refilling the original container). The container having machine-readable indicia 24 thereon indicatives of the liquid product and the original sales prices of the container as filled with the liquid product prior to the first refilling thereof (see the abstract; col. 6, lines 45+; and figure 1). This obviously teaches the steps of labeling the original container with machine-readable indicia 24 indicative of the price of the fluid product. For each refilling of the container, the vendee will only be charged for the product, and not for the container. Therefore, the actual price charged to the vendee for the refilled container equals the original sales price (i.e., the price of the container combined with the price of refilled liquid contained therein prior to the first refilling thereof) less the value of the discount price (i.e., the redeeming the price of the container) (see col. 4, lines 59+). Bradbury shows in figure 5 that when the container being positioned within a chamber, a vertically-oriented liquid filling pipe 80 having a discharge port at the bottom thereof and positioned over and in registered with a filling opening 19 in the original container 10 (see col. 8, lines 50). The filling pipe being inserted into the container through the opening until the outlet is brought to a filling position with respect to the container then the container is filled with a preselected volume of the liquid product (see col. 8, lines 50+). Bradbury further anticipates the system having an audible or visual signal to indicate when the container has been filled and the fluid passing through the filling spout has been stopped which obviously teaches that the system having a means for sensing the complete filling of the container and for terminating the transfer fluid (see col. 11, lines 45+).

Although Bradbury teaches the method of charging the refill vendee a reduced price (i.e., charging only the price of the refilled product and not the container by modifying the bar code on the container to indicate the container has been refilled), he does not teach the system having a reading means in the chamber such that when the returned container is positioned in the chamber, the indicia on the

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container is oriented to be in register with the reading means and dispensing to the refill vendee a discount coupon to be presented to the vendor's checkout together with the refilled container.

Cahill discloses a redemption system 10 having a chamber 18, a scanner 118 detecting the UPC code on a returned container (i.e., the container is positioned within the chamber with the UPC code oriented to be in registered with the scanner) (see the abstract, col. 7, lines 59+, and figure 15). Upon the system recognizing detected data, the detected information is processed at the controller 160, and the system issues a cash refund or a redeemable coupon for the face value of the returned containers to the consumer (see col. 9, lines 44+; col. 10, lines 37+; and figure 15).

In view of Cahill's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the means to read the indicia on the container (i.e., from the UPC code thereon) to initiate the operation of identifying the value of the container, and providing a redeemable coupon for the face value of the container in the system of Bradbury in order to provide an automated product dispensing system having an inexpensive redeeming process without alteration of the bar code on the container by issuing the coupon which is equivalent to the cost of the container at the checkout station.

Note: The examiner recognizes that the intended purpose of Cahill's system is for "non-refillable" container. However, Cahill teaches more importantly recognizing the container from the UPC code on the returned container and retrieving the detected information from the control system 160 and printing a credit slip redeemable for the face value of the returned container, e.g., printing a coupon that is redeemable for the face value of the returned container.

Due to the fact that Bradbury teaches the process of backing out the cost of the container at the checkout process so that the customer is only charged for the refilled product and not the container, and the examiner only relying on the Cahill's teaching of reading an indicia code from the container and providing a coupon for the value of a returned container; it would have been obvious to an artisan of

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ordinary skill in the art at the time the invention was made to substitute the process of modifying the code on the container, as taught by Bradbury, with the process of printing the coupon that is redeemable for the face value of the returned container at the check out process, as taught by Cahill, in order for the customer to redeem the coupon so as to be charged for the refilled product only and not the container. Such modification would have eliminated the bar code altering operation in the system of Bradbury and thus would have eliminated a stimulus response indicator and the stimulus-sensitive material in the system of Bradbury, and therefore, would have provided simplified the structure

Re claims 3: Bradbury shows the apparatus having a vertically oriented liquid filling pipe 80 having an outlet, being positioned over a filling opening 19 in the original container, and connected to a supply of the liquid product (see col. 8, lines 50+ and figure 5). The filling pipe being vertically movable with respect to the original container and being sized to freely enter the filling opening (i.e., the spout 80 is inserted downwardly into the open neck of the container 10). The filling pipe being inserted into the container through the opening until the outlet is brought to a filling position with respect to the container, and following, which the container is filled with a preselected volume of the liquid product (see col. 8, lines 50+ and col. 11, lines 45+).

Bradbury as modified by Cahill is silent with respect to the filling pipe inserted into the container through the opening until the outlet is adjacent the bottom of the container.

However, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to modify the vertical filling position by further lowering the outlet pipe close to the lower surface to the container or adjacent to the bottom of the container in order to prevent any liquid splashing out of the container through its opening and reduce any bubbling effect within the container while refilling the product which may cause the liquid to over flow.

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4. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury as modified by Cahill as applied to claim 1 above, and further in view of Matthias [US 6,151,587]. The teachings of Bradbury as modified by Cahill have been discussed above.

Although Bradbury as modified by Cahill fails to teach the system dispensing an additional coupons and a graphic display of information at the time of dispensing the discount coupon.

Matthias teaches a coupon dispenser for generating coupons (see the abstract), the system having a graphic display area 16 for a customer can identifies a particular good or product for which a coupon can be issued, and two coupon printers 38, 40 coupled to the processor for printing the coupons with a graphic display of information (col. 1, lines 40+; col. 2, lines 23+, lines 55+; and figures 1, 4).

In view of Matthias' teaching, it would have been an obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the system that advertises the products by displaying the products and issuing/printing the coupons in the teachings of Bradbury as modified by Cahill in order to provide coupons for additional products of the customer's interest (i.e., at the time of dispensing the discount coupon for the returned container) which can utilize while the customer in the store. Such modification would have motivated the customer to purchase additional products while she or he is in the store and thus it would increase the product sales in the store.

5. Claims 2 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury as modified by Cahill as applied to claim 1 above, and further in view of Stefan [JP 06-277,231]. The teachings of Bradbury as modified by Cahill have been discussed above.

Re claims 2 and 6-7: Bradbury as modified by Cahill fails to teach the system selectively vending a plurality of containerized liquid products respectively into an original refillable container from a single dispensing station and process of each refilling a selected original refillable container with a matching liquid product.

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Stefan discloses a device for dispensing and mixing of multi-component material (see the abstract), the system having a plurality of dispensers (9-11) each storing powdery material compositions and liquid ingredients different in color and composition composed of dental cements and alloys (see the abstract and figure 1). Stefan shows a plurality of containerized liquid products respectively connectable to a mixing container 5 to blend the plurality of the products and dispenses the mixture from a single dispensing station 5, 6 based on the matching liquid product controlled by input signal 13 from the computer 4 (see the abstract and figure 1).

In view of Stefan's teaching, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the system selectively vending a plurality of containerized liquid products respectively into a single dispensing station based on matching liquid product information controlled by the input signal in the system of Bradbury as modified by Cahill in order to provide an apparatus that vends a plurality of products each having a different combination of mixed products (i.e., a mixture of a plurality of products) based on an input signal. Such modification would have provided Bradbury as modified by Cahill with a dispensing system that dispenses multiple products, therefore, provide a greater choice of dispensing items to the customers.

Re claims 8-9: Although Stefan teaches the process of dispensing and mixing multi-components (i.e., plurality of available products) and liquid ingredients different in color and composition; Bradbury as modified by Cahill and Stefan fails to teach the step of polling to dispense optional ingredients.

However, it would have been obvious extension to an artisan of ordinary skill in the art at the time the invention was made to further provide an additional selection function to the customer by providing additional available products, i.e., any additional material components and liquid ingredients that is appropriate to combined or mixed whether they are different colors, scents, or etc. , in order to increase and maximized the customer's desired selection.



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Re claim 10: with respect to the specific item of the plurality of available products, such as scents, it would have been obvious ex

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury as modified by Cahill as applied to claim 8 above, and further in view of Wait [US 2,18,630]. The teachings of Bradbury as modified by Cahill have been discussed above.

Although Bradbury teaches the apparatus having a chamber (a container receiving housing 44), and Cahill discloses a system having a scanner 118 detecting and identifying the container from the UPC code on the returned container and a means interconnecting the reading means and the controller of the system to provide a redeemable coupon for the face value of the containers based on the detected UPC code, Bradbury as modified by Cahill fails to teach the apparatus having a door means for closing off the chamber, interlocking means actuating the door means, a means connecting the reading means and interlocking for controlling the dispensing operation.

Wait teaches a dispensing vending machine having a receiving chamber adapted to be closed by a door 11 (see figure 1). The chamber having a latch member 15 to lock the door when it is in a closed position, and wherein the door having a switching device 17 for activating the dispensing operation when the door is in a closed position (see col. 2, lines 45 and figure 1). Therefore, when the door in closed position, the chamber is locked by a latch member 15 and dispensing operation is activated which obviously teaches that the system having a connecting means (not shown) between activating means and interlocking means for controlling the dispensing operation.

In view of Wait's teaching, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the chamber having a door with locking mechanism and activating mechanism in the system of Bradbury as modified by the Cahill in order to provide safety precaution devices in the vending machine to prevent any possible contamination and vandalism (see col.

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1, lines 26+). Such modification would have provided Bradbury as modified by Cahill with a dispensing system that is protected from unauthorized tempering and therefore, improve the quality of the vending apparatus. Accordingly, it would have been an obvious extension taught by Bradbury as modified by Cahill.

4. Claims 14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury in view of Hovakimian [US 5,466,919]. The teachings of Bradbury have been discussed above.

Bradbury further teaches the method of distributing merchandises (i.e., the empty container) having the label of a product 20 to the customer. The label of the product for merchandises having the unique machine-readable code 24 identifying the price of the merchandise with the product container. He teaches the steps of reading the machine-readable code, filling the labeled product container, and compensating the customer responsive to the reading step (i.e., paying only the refilled product and not cost of the container at the checkout process) (see col. 2, lines 49+ for example).

Bradbury does not teach the customer being a member of the organization and the step of generating a unique machine-readable code for the organization.

Hovakimian discloses a method to provide an automatic contribution to a charity. The customer having a card to make a purchase transaction is a member of the charitable organization. The card is labeled to indicate a selected charity to receive a donation. When making a transaction, the system read the unique machine-readable code 16 from the card indicating a selected charity to receive a donation.

In Hovakimian's teaching, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate an automatic contribution method in the transaction operation by including an unique machine-readable code for the charitable organization on the label of the product container to the indicate a selected charity to receive a donation so that when the customer makes a transaction, a selected charitable organization would automatically receive a percentage of the transaction as a donation.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 11-13 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 8-10 of copending Application No. 09/396,574. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 09/396,574.

Although the conflicting claims are not identical, they are not patentably distinct from each other because in claims 1-6 of the present claimed invention, Applicant claims a method of vending a fluid product comprising the steps of labeling a container, distributing an original container for the fluid product, refilling the container, and producing a promotional coupon responsive to the dispensing of the fluid product into the container.

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The copending Application No. 09/396,574 discloses a method of vending a containerized liquid product to a vendee utilizing an original container having a label with an indicia thereon for liquid product at the time prior to the first refilling and, after said original container has been emptied of said liquid product, then vending multiple refilling of the liquid product in the original container with dispensing a discount coupon to be presented to the vendor's checkout for a redemption. Although, the scope of the claims 1-6 of the present application and claims 1-6 of the copending Application No. 09/396,574 are almost identical, the difference between the present claimed invention and the copending Application No. 09/396,574 is the specific steps of distributing an original container. However, due to the fact that the copending Application No. 09/396,574 teaches the operation of refilling the original container that is in possession of the vendee obviously teaches that the original container for the fluid product have been distributed to the vendee prior to the first refilling operation. Accordingly, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to use the teachings of claims 1-6 of the copending Application No. 09/396,574 as a general teaching for the method of refilling the container to include the step of distribution of the container as claimed by the present application. The instant claims obviously encompass the claimed invention of the copending Application No. 09/396,574.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

7. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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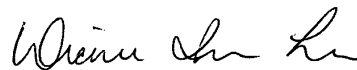
8. The following is a statement of reasons for the indication of allowable subject matter:  
Bradbury, as modified by Cahill, Stefan, and Hovakimian fails to teach the specific steps of providing the labeled product contain to a contact within the organization and disbursing the labeled product container from the contact to the organization member when distributing the labeled product container, as set forth in the claim.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is 703-306-3427. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



D. I. Lee  
Primary Examiner  
Art Unit 2876

D.L.  
January 27, 2003